

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Legislative Authority over the Committee Process

Article III, Section 4 of the Florida Constitution provides in relevant part “[e]ach house shall determine its rules of procedure.”¹ Section 4 also provides that “[e]ach house shall be the sole judge for the interpretation, implementation, and enforcement of this section.”² Pursuant to these provisions both houses of every edition of the Florida Legislature has the authority to decide for themselves how to conduct the state’s legislative business for the duration of their respective terms. Accordingly, during the organizational session of each newly elected Legislature, both the House and Senate adopt their respective rules to govern all aspects of the legislative process including the conduct of committee meetings, and the powers and privileges of committee chairs and members.

In terms of the hierarchy of legislative authority over its own procedure, the constitution is the supreme authority, the rules adopted by each chamber supersede any statute, and statute may be used to the extent each succeeding Legislature chooses to follow it, or acquiesces to it, without adopting any rule that contradicts the statute. No prior or present Legislature can bind a future successor Legislature through the adoption rules or statute.³ House Rule 13.5 states:

These rules are adopted pursuant to the specific authority granted and the inherent powers vested in the House of Representatives by the Florida Constitution. These rules are intended to facilitate the orderly, practical, and efficient completion of legislative work undertaken by the House. These rules shall govern procedures in the House notwithstanding any inconsistent parliamentary tradition and notwithstanding any joint rule or any statute enacted by a prior Legislature. Adoption of these rules constitutes the determination of the House that they do not violate any express regulation or limitation contained in the Florida Constitution. These rules may not be construed to limit any of the powers, rights, privileges, or immunities vested in or granted to the House by the Florida Constitution or other organic law.

Legislative Investigations and Witness Testimony

Article III, Section 5, of the Florida Constitution provides:

Investigations; witnesses.--Each house, when in session, may compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees, and may punish by fine not exceeding one thousand dollars or imprisonment not exceeding ninety days, or both, any person not a member who has been guilty of disorderly or contemptuous conduct in its presence or has refused to obey its lawful summons or to answer lawful questions. Such powers, except the power to punish, may be conferred by law upon committees when the

¹ Art. III, Section 4(a).

² Art. III, Section 4(e).

³ See, Art. III, Sections 1 – 4. The one exception to this is a recently adopted constitutional amendment requiring the Legislature to create a joint rule to govern the joint legislative budget commission “which shall remain in effect until repealed or amended by concurrent resolution.” Art. III, Section 19; CS/SJR 2144 (2005).

legislature is not in session. Punishment of contempt of an interim legislative committee shall be by judicial proceedings as prescribed by law.

Under this provision both houses of the Legislature may compel the attendance of witnesses while in session and during any interim period. Also, this provision authorizes each house, while in session, to directly punish by a \$1,000 fine and “imprisonment” up to 90 days, any person who refuses to obey a lawful legislative summons or answer a lawful question.

Rule 7.21 and 16.1 in the House, and Rule 2.2 in the Senate, authorize the chair or any member of a council, committee or subcommittee to administer oaths and affirmations “in the manner prescribed by law to witnesses. . .” There are also parallel rules providing authority for each chamber’s presiding officer to authorize the issuance of subpoenas for their respective Committees.⁴

Currently, the only statute that expressly provides the specific text of an oath to be administered for a witness giving sworn testimony is found in s. 90.605, F.S., of the evidence code. The evidence code, although not applicable to legislative committee meetings, serves as a template for the administration of oaths to witnesses in a manner provided by law through the language of s. 90.605, F.S.⁵ This section provides in part: “[b]efore testifying, each witness shall declare that he or she will testify truthfully, by taking an oath or affirmation in substantially the following form: “[d]o you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?” This language is commonly adapted for use in committee meetings and special master hearings on claim bills for the purpose of putting witnesses under oath prior to providing testimony.

Crimes Involving Lying to the Legislature

There are two distinct sections of statute that currently provide criminal sanctions for providing false testimony to legislative committees. The first section is perjury in an official proceeding under s. 837.02, F.S., which provides in part “. . . whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree.⁶

The second section of statute is the section of law that HB 1145 amends. This section provides a more severe punishment than the perjury statute for the specific act of willfully affirming or swearing falsely in regard to any material matter or thing before any [standing or select] committee or subcommittee. Section 11.143(4), F.S., makes this offense a second degree felony.⁷

Effects of HB 1145

HB 1145, F.S., codifies an oath or affirmation which must be taken by any person as a precondition to their addressing a legislative committee. The bill states that the oath or affirmation must be in substantially the following form: “[d]o you swear or affirm that the information you are about to share will be the truth, the whole truth, and nothing but the truth?” The person’s response must be noted in the record. The bill excludes from its mandate members of Legislature and legislative employees acting in their official capacities. The bill also excludes minors when the chair of the committee determines that the child understands the duty to tell the truth.

⁴ As used in this analysis “Committee” refers to councils and committees including select committees in the House and committees and subcommittees, including select committees in the Senate. House Rules 7.20 and 16.1; Senate Rule 2.2.

⁵ Section 90.103.

⁶ A third degree felony is punishable by a maximum of five years imprisonment and a \$5,000 fine. Sections 775.082 & 775.083. The definition of “official proceeding” for use in the perjury statute includes legislative committee meetings. Section. 837.011, F.S. A “material matter” is any subject which could affect the course or outcome of the proceeding. See, s. 837.011, F.S. For purposes of perjury, the false statement must be one of fact not one of opinion or belief. Vargas v. State, 795 So.2d 270 (Fla. 3rd DCA. 2001).

⁷ A second degree felony is punishable by a maximum of fifteen years imprisonment and a \$10,000 fine. Sections 75.082, 775.083, F.S.

As an alternative to taking the required oath, the bill states that the House and Senate may provide by rule that a person appearing before a committee complete and sign an appearance form before speaking to a legislative committee. Under the bill, the signed appearance form constitutes a written affirmation to “speak the truth, the whole truth, and nothing but the truth,” and subjects a person to the penalties provided in the bill.

HB 1145 deletes the current second degree felony level offense for anyone who willfully provides false testimony to a committee. The current offense can apply regardless of whether the person providing false testimony to the committee was compelled to appear by subpoena. HB 1145 creates in its place two levels of felony offenses within chapter 11 with elements that are virtually identical to the current offense of perjury in an official proceeding in chapter 837. The third degree felony created by the bill applies to any person who makes a false statement, which he or she does not believe to be true, under the oath or affirmation required by the bill in regard to any material matter.⁸ The offense created by the bill is a second degree felony if the person providing false testimony was compelled to appear by subpoena. In short, compared to current law, HB 1145 limits the circumstances in which someone lying under oath to the Legislature will be subject to a second degree felony to only those instances where the person was compelled to appear by subpoena.

HB 1145, while amending the criminal aspects of statute applicable to the conduct of witnesses who appear before legislative committees, will not bind future Legislatures to abide by the particular procedure set forth in the bill if subsequent Legislatures provide for different procedures in rules they adopt for themselves.

C. SECTION DIRECTORY:

Section 1. Amends s. 11.143, F.S., to delete current provisions relating to the administration of oaths by legislators and removing an offense regarding providing false testimony to the Legislature.

Section 2. Creates s. 11.1435, F.S., relating to requiring the administration of oaths to persons testifying before legislative committees and creating crimes and penalties for providing false testimony to the Legislature.

Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁸ The oath required under the perjury statute refers to an oath in an official proceeding whereas the bill refers to the oath required by the bill, (which is an oath before a legislative committee which in turn is an official proceeding under current law.)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and cities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill's exclusion of minors from the requirement to take an oath has the effect of excusing minors, who understand the obligation to tell truth, from the criminal consequences of lying to the Legislature. This occurs because the bill's exclusion in paragraph (1)(b) from the requirement to take the oath required under paragraph (1)(a) is also carried through as an exemption to the third degree felony offense created in paragraph (2)(a). Under the analogous current provision of s. 90.605, F.S., a child may be exempted from the requirement to take an oath if, the court determines the child understands the duty to tell the truth, but the exemption for a child in s. 90.603, F.S., does not relieve the child of the obligation to tell the truth in an official proceeding under penalty of perjury.⁹

In a closely related issue, while the bill exempts minors, legislators and employees from the third degree felony created in the bill, it does not carry those exemptions through for the second degree felony created.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁹ Section 90.605(2), F.S., provides: In the court's discretion, a child may testify without taking the oath if the court determines the child understands the duty to tell the truth or the duty not to lie.